

TOWN OF MOUNT AIRY BOARD OF APPEALS

FINDINGS AND DECISION

CASE NO. MA-BOA-2021-03

HEARING ON DENSITY VARIANCE

DECEMBER 14, 2021

Applicants: Frank Omelka (“Applicant”)
Location: 1010 S. Main Street, Mount Airy, MD 21771 (“the Property”)
Current Zoning: Residential Existing (RE) District
Current Use: Commercial/Partially Vacant Land
Proposed Use: Residential Subdivision

WHEREAS, Applicant seeks approval of an increase in permitted density up to 2.27 units per acre in order to yield a total of 5 residential lots; and

WHEREAS, the Property, consisting of two parcels, is currently largely unimproved; and

WHEREAS, Applicant intends to improve the Property by subdividing and constructing a residential subdivision; and

WHEREAS, Applicant desires to create five residential lots over the two parcels making up the Property; and

WHEREAS, pursuant to the Town Code, Chapter 112 “Zoning”, Section 112-24B(2)(a), the maximum density in the RE District is 1.75 dwelling units per gross developable acre, which would permit only 3.88 (*i.e.*, 4) residential lots on the Property; and

WHEREAS, in order to yield 5 lots over the two parcels, a variance from the maximum density is sought; and

WHEREAS, the Town Planning Commission made a favorable recommendation for approval of this variance¹; and

WHEREAS, Town Staff recommended approval of the variance with the following conditions: (1) that the single family homes to be constructed must match the existing neighborhood and meet all the bulk requirements of this zone, (2) open space and storm water management must be provided on site, and (3) the two houses along Main Street must face Main Street; and

WHEREAS, on December 14, 2021, the matter of the variance application came before the Town's Board of Appeals pursuant to the Town Code, §§ 112-61; and

WHEREAS, the following members of the Board of Appeals were in attendance: Peter Helt (Chair), Judy Stull, Keith Gehle, and Diane Gleason; and

WHEREAS, one position of the Board of Appeals is vacant; and

WHEREAS, all witnesses were duly sworn; and

WHEREAS, the following witnesses testified for Applicant with opportunity for cross-examination:

Ron Thompson, on behalf of Applicant

WHEREAS, the following residents and/or adjoining or neighboring property owners asked questions, testified and/or offered public comment:

Jim Morton, adjacent property owner;

Phyllis Reed, adjacent property owner;

Tim Berger, neighboring property owner.

WHEREAS, the following exhibits were introduced and are hereby marked and attached hereto:

Exhibit 1 - Staff Report, December 14, 2021 with the following attachments: plat laying out the 5 proposed residential lots, and overhead satellite image showing the Property.

¹The Application was erroneously processed initially as an application for special exception, and as noted below, the Applicant's witness testified to the proposed variance meeting a number of the general and/or applicable specific conditions (if any) for a special exception.

WHEREAS, John Breeding, Town Zoning Administrator and Community Planning Administrator, provided a summary of the Staff Report and recommendation; and

WHEREAS, in summary, **Ron Thompson** testified that he is with Van Mar & Associates, the engineering and surveying firm working with the Applicant; that the Property has been vacant for a very long time and that the proposed development of the Property with five residential lots will bring it into conformity with the character of the neighborhood; that the Application seeks a minor increase in density from 4 residential lots to 5 lots; that the proposal will contain some open space with 2 units facing Main Street; that the residential units will be single family dwelling units, consistent with the residential units that surround it, and will fill a hole in the neighborhood, hence the use will be appropriate for the location; in response to a question by adjoining property owner Jim Morton, Mr. Thompson testified that open space is made up of the non-stormwater management features of the development and does not include the SWM facilities; Mt. Thompson testified that there will be no storm water management ponds but dry wells, and that the storm water management approval process has not yet begun; Mr. Thompson further testified, in response to questions by Mr. Morton over the fact that the Property's property line runs through his driveway, asking how that situation will be dealt with, Mr. Thompson testified that this situation will be dealt with in the development review process possibly by means of cross-easements; Mr. Thompson testified in response to questions by Phyllis Reed, adjoining property owner, that the development will contain single family homes; and testified that:

- (1) The proposed use, including its nature, intensity, and location, is in harmony with the intent of the Town Master Plan and the orderly and appropriate development of the district.
- (2) That adequate water supply, sewerage disposal, storm drainage and fire and police protection are or can be provided for the use.
- (3) That the use of adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature, and height of buildings, walls and fences.
- (4) That the use will have proper location with respect to existing or future streets giving access to it, and will not create traffic congestion or cause industrial or commercial traffic to use residential streets.
- (5) That there are no specific standards (in Section 112-62) that are applicable.²

²Again, these were special exception standards, though some of the standards are the same or similar to the standards for granting a variance.

WHEREAS, **Jim Morton** provided comment and/or testimony that he has been the adjacent homeowner since 1977, testified that he is concerned about the traffic that the development will create and that backing out into Main Street from his property is already very difficult asserting that the development will add 5-10 vehicles to the daily traffic; he also testified that he is concerned because the Property's property line runs through his driveway and wanted to know how that would be dealt with; and

WHEREAS, **Phyllis Reed** testified that her property and home border the rear of the Property and that she had a stormwater drainage issue at this location and diverted it from the middle of her yard which still has left a divit; she testified that she supports residential homes there and that having lived with a business over there is happy that homes will be going in; but she testified that she felt that five homes on that property was "pushing it" which concerns her; she also testified that the homes could become rentals; and testified about issues with property lines and reduction in lot sizes, which may have to be dealt with down the line; and

WHEREAS, **Tim Berger** offered public comment that he is the owner of a nearby house to voice support for the development of the Property as residential houses, trusts that all other issues will be dealt with in the development review process, would prefer fewer than five houses but is amenable to it; and

WHEREAS, the proceedings were video and audio recorded.

NOW, THEREFORE, the Board of Appeals upon receiving the evidence and upon motion to approve the Application, voted (3 votes to 1 – Board Member Gleason dissenting) to approve the Application and conditionally grant the variance for the Property, having made the following findings and determinations:

- A. That Applicant established by a preponderance of the evidence that:
- (1) There are unique physical conditions peculiar to the particular property and that the unnecessary hardship or practical difficulty is due to such conditions.
 - (2) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Town's Zoning Chapter applicable to the lot, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - (3) Such unnecessary hardship or practical difficulty has not been created by the Applicant or the Applicant's predecessor in title.
 - (4) The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of

adjacent property, nor be detrimental to the public welfare:

- (5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (6) The variance is sought is not so general or recurrent in nature to make reasonably practicable the formulation of a general regulation for such conditions.

B. That the Applicant be and is hereby granted a variance to the maximum density requirement as requested in the Application, so as to permit 5 lots on the two parcels making up the Property, subject to the following conditions:

- (1) That the single family homes to be constructed must match the existing neighborhood and meet all the bulk requirements of this zone,
- (2) Open space and storm water management must be provided on site, and
- (3) The two houses along Main Street must face Main Street

C. The exhibits and sign in sheet for witnesses are attached hereto.

ATTEST:

John Breeding,
Zoning Administrator and
Community Planning Administrator
Town of Mt. Airy

Peter Helt, Chair
Town of Mount Airy
Board of Appeals